

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

CHAPTER 24

WASTEWATER REVOLVING FUND ACT

Sub-Chapter 1

Financial Assistance

Rule 36.24.101 Purpose

3.24.102 Definitions and Construction of Rules

36.24.103 Direct Loans

36.24.104 Types of Bonds; Financial and Other Requirements

36.24.105 Other Types of Bonds

36.24.106 Covenants Regarding Facilities Financed by the Loan

36.24.107 Fees

36.24.108 Evaluation of Financial Matters and Commitment Agreement

36.24.109 Requirements for Disbursing of Loan

36.24.110 Terms of Loan and Bonds

Sub-Chapter 1

Financial Assistance

36.24.101 PURPOSE (1) The purpose of this chapter is to implement provisions of the Wastewater Treatment Revolving Fund Act pursuant to Title 75, chapter 5, part 11; and sections 601 through 607 of Federal Water Pollution Control Act, 33 USC 1381 through 1387, as amended.

(2) The act creates a financing mechanism for wastewater treatment projects and certain non-point source control pollution projects through use of loans and other financial incentives.

(3) The board of environmental review has adopted rules to assure that the state's wastewater treatment program complies with the Clean Water Act. ARM 16.18.301 et seq.

(4) The act authorizes the use of the revolving fund to provide several types of financial assistance to municipalities and private concerns. These rules implement one of the authorized forms of financial assistance, a direct loan to municipalities.

(History: 75-5-1105, MCA; IMP, 75-5-1103, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/10/95.)

36.24.102 DEFINITIONS AND CONSTRUCTION OF RULES In this chapter, the following terms have the meanings indicated below and are supplemental to the definitions contained in Title 75, chapter 5, part 11, MCA, sections 601 through 607 of the Federal Water Pollution Control Act, 33 USC 1251 through 1387, as amended, and ARM 16.18.302. Terms used but not defined herein have the meanings proscribed in ARM 16.18.302 or the indenture of trust. Any conflict between this subchapter and the indenture of trust shall be resolved in favor of the indenture of trust.

(1) "Act" means Wastewater Treatment Revolving Fund Act, Title 75, chapter 5, part 11, MCA.

(2) "Administrative expense surcharge" means a surcharge on each loan charged by the department to the municipality expressed as a percentage per annum on the outstanding principal amount of the loan, payable by the municipality on the same dates that payments of principal and interest on the loan are due, calculated in accordance with these rules.

(3) "Administrative fee" means the fee expressed as a percentage of the initial committed amount of the loan retained by the department from the proceeds of the loan at closing, calculated in accordance with these rules.

(4) "Application" means the form of application provided by the department and the department of environmental quality which must be completed and submitted in order to request a loan.

(5) "Binding commitment" means an executed commitment agreement.

(6) "Bond" means an obligation issued by a municipality pursuant to the provisions of Montana law and the code.

(7) "Borrower resolution" means a resolution of a municipality authorizing the issuance of bonds.

(8) "Borrower" means a municipality to whom a loan is made.

(9) "Borrower obligation" means a bond.

(10) "Closing" means, with respect to a loan, the date of delivery of the borrower resolution and the borrower obligation to the department.

(11) "Code" means the Internal Revenue Code of 1986, as amended.

(12) "Commitment agreement" means a written agreement between the borrower and the department pursuant to which the department agrees to make a loan to the borrower in a specified principal amount on or before the date and subject to the terms and conditions specified in the agreement.

(13) "Debt" means debt incurred to acquire, construct, extend, improve, add to, or otherwise pay expenses related to the system, without regard to the source of payment and security for such debt (i.e., without regard to whether it is general obligation revenue or special assessment debt).

(14) "Department" means the Montana department of natural resources and conservation.

(15) "Department of environmental quality" means the Montana department of environmental quality.

(16) "Eligible water pollution control project" means projects that meet the requirements of the federal act and approved by the department of environmental quality, including certain sewage system projects, storm sewer or storm drainage projects, wastewater treatment system projects and solid waste management projects that have been approved as part of the state's non-point source management plan.

(17) "EPA" means the United States environmental protection agency.

(18) "EPA agreement" means the operating agreement between the state and the EPA.

(19) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 USC 1251 through 1387, as amended.

(20) "General obligation" means an obligation of a municipality pledging the full faith and credit of and unlimited taxing power of the municipality.

(21) "Governing body" means the duly elected or appointed board, council, or commission or other body authorized by law to govern the affairs of the municipality.

(22) "Gross revenues" means with respect to revenue bonds, all revenues derived from the operation of a sewage, wastewater, storm sewer or storm drainage system, or solid waste management system, including but not limited to rates, fees, charges, and rentals imposed for connections with and for the availability, benefit, and use of the water, sewage, wastewater, storm sewer or storm drainage system, or solid waste management system as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the system and all income received from the investment of all moneys on deposit in system accounts.

(23) "Indenture of trust" means the indenture of trust between the board of examiners and a trustee establishing and implementing the program, establishing certain terms and conditions for the sale and issuance of the state's bonds to fund the program, providing for the application of the proceeds of the state's bonds and the repayments of the state's bonds and establishing the funds and accounts for the program.

(24) "Intended use plan" means the document prepared by the department of environmental quality, which identifies uses of the funds in the program and describes how those uses support the goals of the program.

(25) "Loan" means the loan of money from the department to a municipality from the revolving fund in accordance with the provision of the act and these rules.

(26) "Loan loss reserve surcharge" means a surcharge

expressed as percentage per annum on the outstanding principal amount of the loan at the rate determined in these rules and imposed on all borrowers unless waived in accordance with the provisions of these rules.

(27) "Municipality" means municipality as defined in 75-5-1102(5), MCA, and a county, a county water and sewer district, or a solid waste district.

(28) "Net revenues" means the entire amount of gross revenues of the system less the actual operation and maintenance cost plus additional annual costs of operation and maintenance estimated to be incurred, including sums to be deposited in an operating reserve.

(29) "Non-point source" means the source of pollutants which originates from diffuse runoff, seepage, drainage or infiltration.

(30) "Non-point source project" means a project that has been approved in the state's non-point source management plan.

(31) "Origination fee" means the fee imposed on borrowers to pay a proportionate share of costs of issuing the state's bonds to fund the program, as adjusted from time to time as may be required by the department.

(32) "Outstanding bond" means any bonds currently outstanding payable from gross or net system revenues.

(33) "Priority list" means the list of projects expected to receive financial assistance under the program, ranked in accordance with a priority system developed under Section 216 of the Act.

(34) "Program" means the Montana wastewater treatment revolving fund program.

(35) "Project" means the facilities, improvements, and activities financed, refinanced, or the cost of which is being reimbursed to the borrower with the proceeds of the loan.

(36) "Project costs" means the costs of a project which under accepted accounting practice are capital costs of projects authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contract, architectural, engineering feasibility inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accrued on bonds during the period of construction of facilities financed thereby and for six months thereafter, the establishment of reserve requirement, to the extent permitted by the EPA and payment of cost of issuing bonds.

(37) "Reserve requirement" means the amount required to be maintained in a reserve fund securing the payment of the bond as set forth in the commitment agreement which amount shall be the lesser of:

(a) 10% of the principal amount of the bond, or

(b) maximum annual debt service on the bond in the then current or any future fiscal year.

(38) "Revenue" means revenues (gross or net) received by the municipality from or in connection with the operation of the

system.

(39) "Revenue bonds" means bond payable from the net revenues derived from the system.

(40) "Sewage system" means a conduit intended to carry liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

(41) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste, and for purposes of this chapter, improvements to such system that qualify as a non-point source project, including the acquisition of land, installation of liners, monitoring of wells, construction and closure of landfills, transfer stations, container sites, incinerating facility, or composting facilities, and all necessary and related equipment.

(42) "Special assessments" means assessments imposed on a property benefitted from the construction or operation of a project in accordance with Title 7, chapter 7, part 21, and Title 7, chapter 7, parts 41 and 42, MCA.

(43) "Special improvement district bonds" means bonds payable from special assessments.

(44) "State bonds" means the state's general obligation wastewater treatment revolving fund program bonds.

(45) "State revolving fund" means the wastewater treatment works revolving fund.

(46) "State allocation account" means the account in which state monies received through the sale of the state's bonds are deposited.

(47) "Storm drainage or storm sewer system" means any device or system for the collection, conveyance, disposal and treatment of storm waters and runoff.

(48) "System" means the sewage, wastewater, storm drainage or storm sewer system, or solid waste management system of a municipality and all extension, improvements, and betterments thereof.

(49) "Wastewater" means sewage, industrial waste, other waste, and drainage of sewage from all sources, or any combination thereof.

(50) "Wastewater system" means a public sewage system or other system that collects, transports, treats, or disposes of wastewater. (History: 75-5-1105, MCA; IMP, 75-5-1102, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/10/95.)

36.24.103 DIRECT LOANS (1) The department may make a direct loan to a municipality for the purpose of financing or refinancing eligible projects costs of an eligible water pollution control project. The loan must be evidenced by a bond issued by the governing body of the municipality pursuant to a bond resolution.

The bond resolution must be in a form acceptable to the department and contain provisions and covenants appropriate to the type of bond being issued, consistent with the provisions of these rules, the commitment agreement and any financial or other requirements imposed by the department pursuant to these rules. The department has adopted a form of bond resolution that is available for review by prospective borrowers. The bond shall be issued in full compliance with all pertinent statutory provisions of Montana law and these rules, and applicable provisions of the code so that the interest thereon is exempt from federal income taxation.

(2) Anytime after receipt of notice that the proposed project has been placed on the priority list or the state's non-point source management plan, as the case may be and intended use plan and the engineering report for the proposed project, including compliance with the Montana Environmental Protection Act has been approved, a municipality may file an application for financing from the SRF. The municipality shall indicate on the application the type of bond it proposes to issue to secure the requested loan. The municipality shall submit with its application the financial information necessary to enable the department to determine compliance with the provisions of these rules and sufficient information to determine whether the project proposed to be financed is an eligible water pollution control project. (History: 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/10/95.)

#### 36.24.104 TYPES OF BONDS; FINANCIAL AND OTHER REQUIREMENTS

(1) The following types of bonds will be accepted by the department as evidence of and security for a loan under the program if Montana law authorizes the municipality to issue such bonds to finance the project and the department determines the municipality has the ability to repay the loan. Notwithstanding compliance with the provisions of state law, the department may determine that it will not approve the loan if it determines that the loan is not likely to be repaid in accordance with its terms or it may impose additional requirements that in its judgment it considers necessary.

(a) The department may accept general obligation bonds issued by a municipality, upon the following terms:

(i) the bond will not cause the municipality to exceed its statutory indebtedness limitation;

(ii) all statutory requirements for the issuance of such bonds shall have been met prior to the issuance of the bonds; and

(iii) the election authorizing the issuance of the bonds has been conducted by the date of a binding commitment unless such requirement is waived by the department.

(b) The department may accept revenue bonds issued by a municipality in accordance with the provisions of Title 7, chapter 7, part 44, or Title 7, chapter 13, part 2, MCA, or other applicable statutory provisions, subject to the following terms and

conditions:

(i) the bonds must be payable from the revenues of the system on a parity with any outstanding revenue bonds payable from the system. The bond must be secured by a pledge of the net revenues of the system. If bonds are currently outstanding payable from the gross revenues of the system, a gross revenue pledge will be acceptable provided the requirements of (ii)-(iv) are met.

(ii) the payment of principal and interest on the revenue bonds must be secured by a reserve account equal to reserve requirement, such requirement to be met upon the issuance of the bonds;

(iii) the municipality shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve, and to produce net revenues during each fiscal year not less than 125% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year;

(iv) the municipality shall agree not to incur any additional debt payable from the revenues of the system, unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least 125% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the municipality, except that if the rates and charges for service provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the municipality estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued. In no event may any such additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the municipality is in default in any of the other provisions;

(v) applications indicating the loan will be evidenced by the issuance of a revenue bond must be accompanied by:

(A) audited financial statements of the system for the last two completed fiscal years;

(B) a certificate as to the municipality's current population

and number of system users, a schedule of the 10 largest users of the system showing the percentage of total revenues provided by such user and the amount of outstanding system debt;

(C) a description of the existing and proposed facilities constituting the system, including a discussion of the additional capital needs for the system over the next three-year period;

(D) a copy of the ordinance or resolution establishing and describing the system of rates and charges for the use or availability of the system;

(E) a pro forma showing revenues of the system in an amount sufficient to meet the requirements of these rules and any outstanding obligations payable from the system;

(F) if the pro forma indicates an increase in rates and charges to meet the requirements of these rules, a copy of the proposed rates and charge resolution and a proposed schedule for the adoption of the charges and if subject to review or approval by another entity, the schedule for the rate approval;

(G) any other information deemed necessary by the department to assess the feasibility of the project and the financial security of the bonds.

(vi) notwithstanding the fact that the municipal revenue bond act does not require that the issuance of revenue bonds be approved by the voters, the department may require the municipality to conduct an election to evidence community support and acceptance of the project or require the bonds be authorized by the electors and issued as general obligation bonds in accordance with 7-7-4202, MCA. A municipality shall conduct an election to evidence community support and acceptance of the project when in the opinion of the department there are projected large rate increases due to the improved facility or the facility is a projected high cost facility.

(vii) the municipality may pledge water system revenues for a loan where the financed project consists of treatment of side stream waste from a water system or otherwise constitutes a wastewater project;

(viii) in the case of loans to finance solid waste management system projects, particularly where there is no existing system or history of revenues, the department may require among other things: a financial feasibility study; a description of other solid waste management services available in the area; and that the municipality to place the fees and charges on the tax bill and collect in accordance with the provisions of Title 7, chapter 13, part 2, MCA, or require that the debt be secured by the full faith and credit of the municipality.

(c) General obligation bonds issued by county water and sewer districts shall comply with the requirements of ARM 36.24.104(1)(a) hereof, and the provisions of Title 7, chapter 13, parts 22 and 23, MCA. Revenue bonds issued by county water and sewer districts created pursuant to Title 7, chapter 13, parts 22 and 23, MCA will be accepted as evidence of the loan, subject to the following terms



and conditions:

(i) The issuance of the bonds must be authorized by the electors of the district as provided in 7-13-2321 through 7-13-2328, MCA;

(ii) the election authorizing the incurrence of the debt shall be conducted by the date of the binding commitment, unless such requirement is waived by the department;

(iii) the district shall covenant that it will cause taxes to be levied to meet the district's obligation on any bond issued to the department in the event that the revenues of the system are inadequate therefore in accordance with the provisions of 7-13-2302 through 7-13-2310, MCA;

(iv) the bonds must be payable from the revenues of the system on a parity with any outstanding revenue bonds payable from the system;

(v) the district shall covenant to collect and maintain rates, charges, and rentals such that the revenue for each fiscal year the bonds are outstanding will be at least sufficient to pay the current expenses of operation and maintenance of the system, to maintain the operating reserve and to produce net revenues during each fiscal year not less than 125% of the maximum amount of principal and interest due on all outstanding bonds payable from the revenues of the system in any future fiscal year;

(vi) the payment of principal and interest on the bonds must be secured by a reserve account equal to the reserve requirement, such requirement to be proportionately funded from each periodic draw so that the requirement is fully satisfied upon the final draw;

(vii) the district shall agree not to incur any additional debt payable from the revenues of the system without the written consent of the department, unless the net revenues of the system for the last complete fiscal year preceding the issuance of such additional bonds have equaled at least 110% of the maximum amount of principal and interest payable from the revenue bond account in any subsequent fiscal year during the term of the then outstanding bonds and the additional bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues must be those shown by the financial reports caused to be prepared by the district, except that if the rates and charges for services provided by the system have been changed since the beginning of the preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional bonds must be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted, to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the engineer for the district estimates will be incurred because of the improvement or extension of the system to be constructed from the proceeds of the additional bonds proposed to be issued. In no event shall any such

additional bonds be issued and made payable from the revenue bond account if there then exists any deficiency in the balances required to be maintained in any of the accounts of the fund or if the district is in default in any of the other provisions;

(viii) an application by a district must be accompanied by:

(A) audited financial statements of the system for the last two completed fiscal years if there is an existing system;

(B) a map depicting the boundaries of the district;

(C) a certificate as to numbers of persons in the district subject to levy described in (v) and the number of wastewater system customers and the amount of outstanding wastewater debt;

(D) a pro forma showing revenues of the system in an amount sufficient to meet the requirements of these rules and any outstanding obligations payable from the system;

(E) if the pro forma indicates an increase in rates and charges to meet the requirements of these rules, a copy of the proposed rates and charge resolution and a proposed schedule for the adoption of the charges.

(d) The department may accept as evidence of the loan, bonds issued by a municipality payable from assessments levied upon real property included within a special improvement district and specially benefitted by the project being financed from the proceeds of the loan, upon the following terms and conditions:

(i) the district be created in accordance with the provisions of Title 7, chapter 12, part 21 and/or Title 7, chapter 12, parts 41 and 42, MCA;

(ii) the city or county agrees to maintain a revolving fund as authorized by sections 7-12-2181 through 7-12-2186 and 7-12-4221 through 7-12-4225, MCA (respectively, the revolving fund statutes) and covenants to secure the bonds by such revolving fund and agrees to provide funds for the revolving fund by levying such tax or making such loan from the general fund as authorized by the revolving fund statutes;

(iii) five percent of the principal amount of the loan be deposited into the revolving fund and the city or county shall agree to maintain in the revolving fund to the extent allowed by law, an amount not less than 5% of the principal of the bonds secured by the revolving fund. The department may, if the financial risks associated with a proposed district warrant it, as a condition to the purchase of such bond, require the city or county to establish a district reserve fund and fund it from the proceeds of the loan, as permitted by law;

(iv) the special improvement district be at least 75% developed. For purposes of this section, a district will be deemed to be 75% developed if 75% of the lots or assessable area in the district has a habitable residential dwelling thereon that is currently occupied or there is a commercial, professional, manufacturing, industrial, or other non-residential facility thereon;

(v) the total amount of special assessment debt including the

amounts to be assessed for repayment of the loan against the lots or parcels of land in the district does not exceed 50% of the fair market value of such lots or parcels within the district;

(vi) if the project to be financed from the loan secured by a special assessment bond is not part of a system currently existing and operated by the municipality receiving the loan and for the normal maintenance and operation of which the municipality is responsible and provides for such through rates and charges, a special maintenance district must be created at the time the improvement district is created pursuant to the applicable statutes in order to provide for the operation and maintenance of the project or an agreement must have been entered into at the time the loan is made between the municipality and another governmental entity, pursuant to which the governmental entity agrees to operate and maintain the project. (History: 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/10/95; AMD, 1998 MAR p. 538, Eff. 2/27/98.)

36.24.105 OTHER TYPES OF BONDS (1) If a municipality wishes to secure a loan by a type of bond not specifically authorized in these rules, the department may accept the bond if the bond is duly authorized and issued in accordance with Montana law as evidenced by an opinion of bond counsel to that effect and the department determines that the terms and conditions of the bond, including the security therefore, are adequate. The department may impose upon the municipality wishing to issue such bonds such terms, conditions, and covenants consistent with the provisions of the law authorizing the issuance of such bonds that it deems necessary to make the bonds creditworthy and thus protect the viability of the program. (History: 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91.)

36.24.106 COVENANTS REGARDING FACILITIES FINANCED BY THE LOAN  
(1) Specific requirements and covenants with respect to the system or improvements to the system being financed from the proceeds of the loan must be contained in the bond resolution, forms of which are available from the department, and may include the requirements and covenants set forth herein. The bond resolution should be consulted for more specific detail as to each of these covenants.

(2) The borrower must acquire all property rights necessary for the project including rights-of-way and interest in land needed for the construction, operation, and maintenance of the facility; to furnish title insurance, a title opinion, or other documents showing the ownership of the land, mortgages, encumbrances, or other lien defects; and to obtain and record the releases, consents, or subordinations to the property rights for holders of outstanding liens or other instruments as necessary for the construction, operation, and maintenance of the project.

(3) The borrower at all times shall acquire and maintain with

respect to the system property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by state law, against such risks and in such amounts, and with such deductible provisions, as are customary in the state in the case of entities of the same size and type as the borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. All such insurance policies shall name the department as an additional insured. Each policy must provide that it cannot be canceled by the insurer without giving the borrower and the department 30 days' prior written notice. The borrower shall give the department prompt notice of each insurance policy it obtains or maintains to comply with this rule and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. The notice shall specifically note any adverse change as being an adverse change.

(4) The department, the department of environmental quality, and the EPA and their designated agents have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the borrower for the purpose of inspecting the system or any or all books and records of the borrower relating to the system.

(5) The borrower agrees that it will comply with the provisions of the Montana Single Audit Act, Title 2, chapter 7, part 5, MCA, and to the extent not required by the single audit act to also provide for each fiscal year to the department and the department of environmental quality, promptly when available:

(a) the preliminary budget for the system, with items for the project shown separately; and

(b) when adopted, the final budget for the system, with items for the project shown separately.

(6) The borrower shall maintain proper and adequate books of record and accounts to be kept showing complete and correct entries of all receipts, disbursements, and other transactions relating to the system, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this resolution, in such reasonable detail as may be determined by the borrower in accordance with generally accepted governmental accounting practice and principles. It will maintain the books on the basis of the same fiscal year as that utilized by the borrower. The borrower shall, within 120 days after the close of each fiscal year, cause to be prepared and supply to the department a financial report with respect to the system for such fiscal year. The report must be prepared at the direction of the financial officer of the borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, must include the following:

(a) a statement in detail of the income and expenditures of the system for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

(b) a balance sheet as of the end of the fiscal year;

(c) the number of premises connected to the system at the end of the fiscal year;

(d) the amount on hand in each account of the fund at the end of the fiscal year; and

(e) a list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond.

(7) The borrower shall covenant to take all necessary and legal action to collect such rates and charges, including terminating service, imposing reconnection fees and placing delinquent charges as a lien against the property and enforcing such lien to the extent permitted by law.

(8) The borrower shall also have prepared and supplied to the department and the department of environmental quality, within 120 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the system. The audit report shall include an analysis of the borrower's compliance with the provisions of the resolution.

(9) The borrower shall maintain project accounts in accordance with generally accepted government accounting standards, and as separate accounts, as required by section 602(b)(9) of the Clean Water Act.

(10) After reasonable notice from the EPA, the borrower shall make available to the EPA such records as the EPA reasonably requires to review and determine compliance with Title VI of the Clean Water Act, as provided in section 606(e) of the Clean Water Act.

(11) The borrower shall agree to comply with all conditions and requirements of the Clean Water Act pertaining to the loan and the project.

(12) The borrower shall agree not to sell, transfer, lease, or otherwise encumber the system, any portion of the system, or interest in the system without the prior written consent of the department while the bond resolution is in effect.

(13) The borrower shall agree to secure written approval from the department for any changes or modifications in the project before or during construction as set forth in the bond resolution.

(History: 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/9/95.)

36.24.107 FEES (1) The following fees and charges are established and imposed for participation in the revolving fund

program.

(a) If an environmental impact statement is required pursuant to the Montana Environmental Policy Act and the department or the department of environmental quality rules, the applicant shall bear the cost of the environmental impact statement.

(b) An administrative fee up to 1% of the amount of the committed amount of the loan must be charged each borrower. The department shall retain the administrative fee from the proceeds of the loan at the time of closing and transfer the fee to the state revolving fund administration account as provided in the indenture of trust. The department and department of environmental quality may determine and establish from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenues available to pay such costs.

(c) Each borrower shall be charged an administrative expense surcharge on its loan equal to .75% per annum on the outstanding principal amount of the loan, payable on the same dates that payment of principal and interest on the loan are due. The department and department of environmental quality may determine and establish from time to time, the precise amount of the administrative expense surcharge to be charged, based on the projected costs of administering the program and other revenues available to pay such costs. The administration expense surcharge must be deposited in the special administrative costs account as provided in the indenture of trust.

(d) Each borrowers origination fee shall be paid at closing by the retention by the DNRC of such amount from the proceeds of the loans.

(e) All borrowers unless excepted from the requirement by the department shall pay a loan loss reserve surcharge equal to 1% per annum on the outstanding principal amount of the loan, payable on the same dates that payments of principal surcharge must be deposited in the loan loss reserve account established in the indenture of trust until the loan loss reserve requirement as defined in the general resolution is satisfied at which point it can be deposited in the state allocation account or to such other fund or account in the state treasury authorized by state law as a department of environmental quality or department representative shall designate, or segregated in a separate subaccount in the loan loss reserve account and applied to any costs of activities under the program authorized by state law as a department of environmental quality or department representative shall designate.

The department and department of environmental quality may determine and establish from time to time, the precise amount of the loan loss reserve surcharge to be charged, based on the loan loss reserve requirement and the amounts in the match account. The borrower shall repay the following items: the loan at an interest rate determined in accordance with ARM 36.24.110, plus the loan loss reserve surcharge plus the administrative expense surcharge.

The borrower shall propose rates and charges for all wastewater services necessary to repay the above items. The department and the department of environmental quality shall rank all applications. Based on a consideration of social economic factors and measures of financial condition the department and department of environmental quality may agree not to impose the loan loss reserve surcharge on the borrower. Any excess fees on revenues generated within or by the program shall be used exclusively for purposes authorized by the federal act. (History: Sec. 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/10/95.)

36.24.108 EVALUATION OF FINANCIAL MATTERS AND COMMITMENT AGREEMENT

(1) Before the commitment agreement is executed, the department shall conduct a review of the applicant's financial status and determine based on the information available as to whether the borrower will be able to repay the loan. This review must include an analysis of all assets and liabilities as well as an analysis of the system's financial capability and may include but not be limited to: condition of the system, number of current and potential users, existing and proposed user fees for system, existing and proposed user fees for other utilities in the jurisdiction, overlapping indebtedness within the jurisdiction and any other financial or demographic condition relevant to the applicant's ability to repay the loan. If on the review of such material, the department determines that the loan cannot be repaid in accordance with its terms, the application must be denied.

(2) Upon approval of the application, the department may require the municipality, upon approval by its governing body, to enter into a commitment agreement in the form provided by the department with the department, pursuant to which the municipality agrees to adopt the bond resolution and issue the bond described therein, and to pay its origination fee in the event the municipality elects not to issue its bond. (History: 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/10/95.)

36.24.109 REQUIREMENTS FOR DISBURSING OF LOAN (1) Loans will be disbursed by warrants drawn by the state auditor or wire transfers authorized by the state treasurer in accordance with the provisions of this rule, and the indenture of trust. No disbursement of any loan shall be made unless the department has received from the municipality, the following:

(a) a duly adopted and executed bond resolution in a form acceptable to the department;

(b) a duly executed bond in a principal amount equal to the amount of the loan in a form acceptable to the department;

(c) a certificate of an official of the municipality that there is no litigation threatened or pending challenging the municipality's authority to undertake the project, to incur the

loan, issue the bonds, collect the system charges in a form acceptable to the department;

(d) an opinion of bond counsel acceptable to the department that the bond is a valid and binding obligation of the municipality payable in accordance with its terms and that the interest in a form acceptable to the department thereon is exempt from state and federal income taxation in a form acceptable to the department;

(e) such other closing certificates or documents that the department or bond counsel may require to satisfy requirements of these rules;

(f) if all or part of a loan is being made to refinance a project or reimburse the borrower for the costs of a project paid prior to the closing, evidence, satisfactory to the department and the bond counsel;

(i) that the acquisition or construction of the project was begun no earlier than March 7, 1985;

(ii) of the borrower's title to the project;

(iii) of the costs of such project and that such costs have been paid by the borrower; and

(iv) if such costs were paid in a previous fiscal year of the borrower, that the borrower intended at the time it incurred such costs to finance them with tax-exempt debt or a loan under a state revolving fund program such as the program;

(g) any certificate of insurance as evidencing insurance coverage as required by these rules and the bond resolution;

(h) a certified copy of the rate and charge ordinance, if applicable, and if subject to approval by another entity, evidence that such approval has been obtained;

(i) all permits or licenses that may be required by the state, any of its agencies and political subdivisions with respect to the project;

(j) executed copy of the construction contract accompanied by the appropriate performance and payment bonds;

(k) any additional documents required by the department or department of environmental quality as a condition to the approval of the loan described in the bond purchase agreement;

(l) a written order signed by a department of environmental quality representative authorizing a disbursement;

(m) a copy of the municipality's request for such disbursement on the form prescribed by the department; and

(n) payment of the origination fee. (History: 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/10/95.)

36.24.110 TERMS OF LOAN AND BONDS (1)(a) The source of funding of the loans under this program initially will be 83.33% from the EPA and 16.67% from the proceeds of the state's bonds. The interest rate on the loan will be determined by the department at the time the loan is made. The rate on a loan must be such that the interest payments there on and on other loans funded from the



proceeds of the state's bonds will be sufficient, if paid timely and in full, with other available funds in the revolving fund including investment income, from which the loan was funded to pay the principal of and interest on the state's bonds issued by the state.

(b) The rate of interest on loans from the program will vary in accordance with the rate on the state's bonds from which the loan is made. The rate of interest on all loans financed from the proceeds of a specific issue of bonds will be the same. The net interest cost on any loan may not exceed the net interest cost to the state on the state bonds from which such loan was made.

(2) Unless the department otherwise agrees, each loan shall be payable, including principal and interest thereon and the administrative expense surcharge and loan loss reserve surcharge, if any, over a term approved by the department, not to exceed 20 years. In no case shall the term of a loan exceed the useful life of the project being financed. Interest, administrative expense surcharge and loan loss reserve surcharge, if any, payments on each disbursement of each loan or portion thereof which is not a construction loan shall begin no later than 15 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 45 days prior to the next following interest payment date). For construction loans, the department may permit principal amortization to be delayed until as late as one year after completion of the project, provided that the payment of interest on each disbursement of a construction loan shall begin no later than 45 days prior to the next interest payment date (unless the loan is closed within 15 days of the next interest payment date, in which case the first payment date shall be no later than 15 days prior to the next following interest payment date) unless the state has provided for the payment of interest on its bonds by capitalizing interest. In any event, the payment of interest must commence no later than the payment of principal.

(3) The department may also permit the borrower of a construction loan not to pay administrative expense surcharge and loan loss reserve surcharge, if any, on such construction loan until up to five months after the completion of construction of the project, but such administrative expense surcharge and loan loss reserve surcharge, if any, shall nonetheless accrue and shall be payable not later than the fifth month following completion of construction. Notwithstanding the previous sentence, the borrower shall pay all interest, administrative expense surcharge and loan loss reserve surcharge, if any, accrued on any construction loan disbursement no later than the twenty-fourth month after such disbursement is made and must thereafter make regular payments of interest, administrative expense surcharge and loan loss reserve surcharge, if any, on such disbursement. (History: 75-5-1105, MCA; IMP, 75-5-1113, MCA; NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD,

1995 MAR p. 2423, Eff. 11/10/95.)

Chapters 25 through 30 reserved